

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:12-cv-146-RJC**

MARVIN W. MILLSAPS,

Petitioner,

v.

**BUTCH JACKSON,
Administrator, Nash
Correctional Institution,**

Respondent.

ORDER

THIS MATTER is before the Court on Respondent’s motions for discovery and his motion to order the U.S. Marshals Service to obtain documents from the Iredell County Clerk of Superior Court. Petitioner contends that he would benefit from the production of the documents, but he makes no fair showing as to how. Rule 6(a) of the Rules Governing Section 2254 Proceedings provides that the Court “may, for good cause shown, authorize a party to conduct discovery under the Federal Rules of Civil Procedure.” Further, the rules provides that the “party requesting must provide reasons for the request.” Rule 6(b) of the Rules Governing Section 2254 Proceedings. It appears that Petitioner is seeking to challenge age-old convictions for which he served his state sentence prior to his prosecution for the offenses underlying convictions in this habeas matter.¹

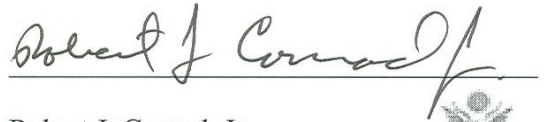
¹ The Respondent has informed the Court that Petitioner has been transferred to a new institution where Lewis Smith is the Administrator. See (Doc. No. 18 at 1 n.1). Accordingly, the Court will order that Mr. Smith be substituted as the proper party. See Fed. R. Civ P. 26(d) & Rule 2(a) Governing Section 2254 Proceedings.

The Court has examined the answer of the Respondent, including the attachments, and finds that it appears the Court has sufficient information to rule on the motion for summary judgment after Petitioner files has filed his reply and that Petitioner has failed to make a sufficient showing to entitle him to discovery.

IT IS, THEREFORE, ORDERED that:

1. Petitioner's motions for production of documents are **DENIED**. (Doc. Nos. 4, 10 & 21).
2. Petitioner's motion to proceed *in forma pauperis* is **GRANTED**. (Doc. No. 6).
3. The Clerk of Court is directed to amend the caption of this case consistent with Footnote 1 on page 1 to substitute---Lewis Smith, Administrator, Albemarle Correctional Institution---as the Respondent in this matter.
4. Petitioner shall have up to and including March 21, 2013, in order to file a reply to Respondent's motion for summary judgment. (Doc. No. 17).

Signed: March 22, 2013



Robert J. Conrad, Jr.
Chief United States District Judge

